

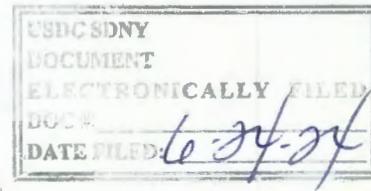
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

CUSTOMS AND TAX ADMINISTRATION OF THE  
KINGDOM OF DENMARK (SKAT) TAX REFUND  
LITIGATION

18-md-2865 (LAK)

This paper applies to: 19-cv-10713 (LAK)



**PRETRIAL ORDER NO. 38**  
(Summary Judgment Motion of  
Defendants Van Merkenstijn et al.)

LEWIS A. KAPLAN, *District Judge.*

Defendants John van Merkenstijn, Richard Markowitz, Bernina Pension Plan Trust, and RJM Capital Pension Plan Trust, four of the seventeen defendants in this action, move for summary judgment dismissing the complaint as against them on the ground that plaintiff's claims against them are barred by a provision of a tolling agreement into which they and others entered with SKAT in 2018.

The movant's reading of the tolling agreement is no stronger than extremely strained. The best that conceivably might be argued for these defendants is that the tolling agreement is ambiguous, in which case there would be a genuine issue of material fact that would foreclose the entry of summary judgment in their favor in light of well established principle that the Court on a motion for summary judgment must "draw all factual inferences and resolve all ambiguities in favor the" the non-moving party,<sup>1</sup> here the plaintiff. But the Court need not now decide whether the tolling agreement is even ambiguous on this point, as SKAT has not sought summary judgment on the ground that the agreement unambiguously requires rejection of the movants' argument.

Accordingly, the motion of these defendants for summary judgment dismissing the complaint (18-md-2865 Dkt 1028) is denied in all respects.

SO ORDERED.

Dated: June 24, 2024



Lewis A. Kaplan  
United States District Judge

<sup>1</sup>

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).